

OCTOBER 2012

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POLITICAL ACTIVITIES IN PUBLIC SCHOOLS

As a country and as communities, we are approaching the end of another lively political season. Public school employees and students are politically interested and active. Political activism is central to democracy and civic engagement. HOWEVER, public school teachers and employees must be careful and appropriate when they express political opinions and support political candidates—in their roles as public employees. As public employees and public educators, we do not forfeit our 1st Amendment right to speak our minds and discuss our opinions and preferences with colleagues in appropriate ways. Teachers are disproportionately influential with their students—we must remember that influence as teachers and students discuss political issues. The following “Recommendations” should help educators participate in the political arena and still maintain appropriate objectivity in their official and professional roles:

Educators MAY:

- Provide factual information and be prepared to answer questions at Community Council meetings and school events and seek employee support and help with various issues of public concern. Examples: a principal could explain to a parent how a school bond election would result in increased funding for the school district. A social studies teacher could encourage her students to study the issues and campaign actively for candidates of their choice.
- Educators can inform patrons and parents of political education issues

through school-wide newsletters, websites, etc. Information provided through school-supported means should be objective and factual. Example: a school website could encourage all school patrons to attend a “meet the school board candidates” night—and include information about all candidates.

- Educators can campaign personally and actively *on their own time* for candidates and issues of their choice. Example: a teacher can have a lawn sign for a candidate of her choice in front of her house.
- Educators can encourage their students to vote and work for the candidates of their choice. Example: a teacher in an appropriate class (social studies, Utah history, etc.) could give credit to students for making phone calls for a candidate or attending the state or county convention for the party the student supports.

Educators SHOULD NOT:

- Contact school employees, parents, students, others using directory information obtained through school to promote political agendas. Similarly, school employees should not use school faculty rooms, or computer equipment, copying equipment to recruit or carry out political activities. Example: a principal should not put political signs or flyers in teachers’ boxes or in the school faculty room.
- Try to persuade or convince employees of the educator’s political viewpoint when the educator supervises the employee. For example: a teacher leader should not harass or badger a teacher who the teacher leader supervises to tell the teacher leader which local school board members the teacher supports.

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YOUR QUESTIONS

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Q: I am a mother of a student who trains seeing eye dogs. My daughter would like to take her dog-in-training to school with her as part of his training. May she take the dog? –*Parent*

A: Utah law allows a person training a “service animal to be accompanied by the animal “...in the use of highways, streets, sidewalks, walkways, public buildings, public facilities, and other public areas as a person who is not a person with a disability.” Is a school a public building? Despite the state law, the official commentary from Office of Special Education Programs (OSEP) provides: a service animal may be excluded from a school building, school function, or school sponsored activity if permitting the service animal would fundamentally alter the nature of the service, program, or activity (Official Commentary to ADA Regulations, 28 CFR

2 Part 35). It seems that the answer to your question is that if a school finds that an animal in training would alter the nature of a school activity or class (e.g. a student is allergic to animals, a student is fearful of dogs), the animal could be excluded. For more information about service animals in schools, see the archived UPPAC October 2011 Newsletter.

Q: My daughter is a cheerleader. We paid fees at the beginning of the year for her uniform, travel to games and other miscellaneous items. She also participated in several car washes and bake sales to raise money for the cheerleaders’ activities. I would like to see an accounting for all of the funds received by the school and the cheer advisor. So far, the cheer advisor has not even responded to my requests to review that information. What should I do? –*Parent*

A: All funds collected by the school and the cheer advisor are public funds. They should be receipted and accounted for clearly by the school. An accounting for the funds (in the form of a ledger or a balance sheet) should be available for your review—or for review by anyone by appointment. If the cheer advisor is unhelp-

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- Fund raise or campaign for a candidate or political issue *during school contract time*. For example: a teacher may not collect contributions for a candidate in the school faculty room.
- Wear political buttons, t-shirts or signs supporting a specific candidate or issue on school time.
- Express partisan political opinions to students in the teacher’s assignment. Examples: a 6th grade teacher should not tell her students that *he* will be voting for Milt Blomley for President. However, a social studies teacher could freely discuss his political opinions and philosophies with young men in his community at an evening political rally even though some of the young men may be in his classes. He should not introduce himself as a teacher at a specific school or use his personal influence with his students.

TEXTING ERA

Far too often these days, the firm boundary between teacher and student is becoming blurred. This is especially true of teachers with cell phones and proclivity for text messaging. Today’s generation of students has been deemed the “Facebook generation”, where kids are permanently connected, and most often, through their phones. Some numbers:

- 90% of 11-17 year olds own some sort of cellular device; 56% of 8-12 year olds and 25% of kids under 8 own cell phones.
- More than 50% of all teen cell phones are smartphones.
- Boys between the ages of 13 and 17 send 2,530 texts a month; girls in this same age range send 4,050 text messages a month.
- Annually, teens send 556,125 words through text messaging.
- 75% of teens sleep with their phones.
- 65% of teens have sent texts messages in the very early hours of the morning. (*ChyerTraps for Educators*, Frederick Lane, 2012)

Bottom line: teens text! All the time! They’ll text anyone who will respond! Including their teachers!

You may have heard us say this before, but every single sexual misconduct case that UPPAC has investigated began with text messaging (since the advent of SMS). Consider the drastic shift in teacher to student contact in the past 10 years. In 2002, if a teacher wanted to contact a student after school hours, the teacher would have to call the student’s home. Either the student’s parents would answer or the student would answer and his parents would immediately ask, “Who was that?” after he hung up. Parents acted as gatekeepers to all communication between their children and the outside world. Today, if a teacher wants to communicate with a student and the teacher knows the student’s cell phone number, the teacher can call—or even easier, send a text—directly to the student. Even the most innocuous text communications, e.g., a response to “Hey teach, what’s the homework assignment for tomorrow?” is now being communicated to a student likely on his bed, in his room, with the door shut, probably late at night. This simple response from the educator opens the door to a type of communication that was unheard of 10 years ago. And rarely does the communication stop there.

In one recent UPPAC case, the educator received the student’s number when she and some friends volunteered to babysit for the educator while he was out one night. The educator texted the student his address, and then the next day the student texted him while he was out of town about the exam she’d just finished in his class, and the tex-

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OCTOBER BOARD ACTION

Based on a recommendation from UPPAC, the State Board of Education took formal action on the following licenses:

Eric Eyre's secondary license was suspended when he was charged with assault, after hitting a man in the face and knocking him unconscious.

Kayla Lee Walker's secondary license was revoked for an inappropriate sexual relationship with a student which took place 30 years ago, but was first reported to police in 2010.

Brent Nielsen's secondary license was suspended for selling school property for personal gain.

Neil Calderwood's license was suspended for selling school property for personal gain and failing to appropriately supervise students.

Spencer Brown's secondary license was suspended for accessing pornography on school property.

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ting continued. In one week, the educator and the student exchanged hundreds of texts, often late into the night and early the next morning. The phone company's records revealed what was in essence, one continuous conversation for days on end. What began as a simple and harmless exchange resulted in a very intimate sharing of very personal details of each others' lives—all via text. In another instance, a student initiated contact with the educator by texting him as a joke, but when the educator responded, the communication continued until the educator sent a picture of himself with his shirt off. The teacher then invited her to his home during his prep period for a "romp in the hay". Another case involved the educator sending texts to a student with sexually explicit content and innuendos.

So, a teacher should consider the following do's and don'ts next time the teacher contemplates sending a text to a student:

- DON'T single out any student in communications.
- DO communicate only about school-related issues.
- DON'T communicate about personal issues—the student's or the teacher's.
- DO make parents aware that a teacher may be communicating with students via text messaging.
- DON'T send text messages late into the night.
- DO keep messages short and to the point.
- DON'T carry on an on-going conversation with a student via text.
- DO send only text messages that a teacher would be comfortable seeing on the front page of the news.
- DON'T send flirty texts—whether a teacher is initiating the text or just responding to a flirty text.
- DO communicate with students as a group if a teacher is going to communicate via text at all.
- DON'T send a picture of yourself to a student; DOUBLE DON'T send a picture of yourself in a compromising position—clothed or unclothed—to a student
- DO immediately report to an administrator and/or law enforcement if a teacher receives a text picture from a student in a compromising position—clothed or unclothed.

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EDUCATORS AS POLITICAL ACTIVISTS: DOING IT RIGHT!

San Leandro Teachers Association v. Governing Board of San Leandro Unified School District (Supreme Court of California, 2009) A 2009 California Supreme Court decision gives us some helpful information and insight about teachers using school resources to send a message and persuade their colleagues. The San Leandro Teachers Association (SLTA—NOT to be confused with the Salt Lake Teachers Association) is the exclusive bargaining representative of the San Leandro Unified School District's certificated (licensed) employees. Each licensed employee is assigned a mailbox. The normal intended purpose of the school mailboxes is to communicate with teachers and staff regarding school-related matters. These are old-fashioned, wooden, permanent fixtures at each school.

In 2004, shortly before an election, SLTA distributed two employee newsletters by placing them in the internal faculty mailboxes. Both letters had some news and employee information for teachers. Both also had several paragraphs of endorsements for school board candidates, expressing support for specific individuals. Both newsletters were produced entirely at SLTA expense and were placed in the mailboxes by SLTA volunteers during their non-work hours. The school district administration

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ful or unresponsive, you could contact your school principal and make an appointment to view all of the funds that have been collected and used for the cheer program. You have a right to know what money was collected and what was used by the cheer program.



Q: I am an English teacher and assigned students to write a paper on a topic of their choice. A student of mine wants to do a paper on a sensitive topic that I don't feel is appropriate for the classroom. One student protested and believes I am censoring her choice of topic. Am I violating freedom of expression laws? –7th Grade English Teacher

A: The topic should probably be approved by the principal of your school—especially now that the assignment is controversial. If the principal deems the topic to be too sensitive or questionable, you may have to request the student choose a different topic. In *Hazelwood School District v. Kuhlmeier*, (1988) a principal censored two student articles about pregnancy and divorce in a school newspaper, because he felt they were too controversial. The principal's actions were challenged in Federal Court, claiming to be in violation of First Amendment rights. The courts sided with the school, finding the concerns were legitimate. The ruling meant that First Amendment rights were not violated in school-sponsored activities related to pedagogical concerns. The *Hazelwood* case has been applied to school sponsored newspapers, band songs, school assignments, and student campaign speeches. If you felt inclined, you could get consent from the student's parents to allow the student to write about a controversial or sensitive topic.



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refused to allow SLTA to use the mailboxes for political communication. The SLTA sought a special writ to allow the distribution and prevent the school administration from blocking the communication. The California lower court had to determine if a specific section of the California Education Code applied which "prohibits the use of school district...funds, services, supplies or equipment for urging the support or defeat of political candidates or ballot propositions." The court also had to decide if a section of California law applied which gave employee organizations the right to use internal mailboxes subject to "reasonable regulation."

The SLTA used an older California teachers' case to support its right to endorse favorable candidates through mailers inserted in the mailboxes. In *L.A. Teachers Union v. L.A. City Board of Ed.* (1969), the teachers association contested the school district policy that prohibited off-duty teachers from circulating a petition for the improvement of education in the faculty lunchroom and lounge. The court decided FOR the teachers association in this case, allowing for freedom of expression in non-instructional settings. But the court distinguished the current situation with employee mailboxes; the school district had a legitimate interest in restricting mailbox communications so as not to permit such mailboxes to become venues for the one-sided endorsement of political candidates by those with special access.

The lower court sided with the California teachers association. The California Court of Appeals reversed the lower court—which also found that the school mailboxes were nonpublic forums. Therefore, they are not available for use by others outside of the public education community, BUT the district can impose viewpoint neutral regulations for what is placed in the mailboxes. AND the restrictions must be "narrowly tailored." The California Court of Appeals found that prohibiting candidate endorsement literature is viewpoint neutral and narrowly tailored enough to be constitutionally sound. And to conclude the case and answer the question raised by the teachers association: the California Supreme Court upheld the California Court of Appeals—the teachers union could not use the school mailboxes to support political candidates or causes but could inform its members of issues in school faculty rooms and lounges.

UPPAC BY THE NUMBERS

If you are an educator and were just arrested, you must report the arrest to your principal, charter school director, or supervisor immediately. For more information, check out the August 2012 newsletter article, [RECENTLY ARRESTED?](#)

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Expedited Hearings scheduled this year—When a Utah Educator is arrested and currently teaching in the classroom, UPPAC schedules an "expedited hearing" to ensure review of all arrests and to determine how the arrest affects the educator's professional responsibilities, including the responsibility of being a role model for his students.

8

Self-reported recent arrests this year—State Board of Education Rule 277-516 requires educators to report *any* arrest(s) to their employing school district within 48 hours.

14

Arrests not reported this year by the educator but revealed through other means.

13

Expedited Hearings reviewed and recommending that teachers be allowed to continue teaching, this year.

1

Letter of Warning received this year.